IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated; 25 -11-2004

Coram;

The Honurable Mr.Justice V.KANAGARAJ

W.P.No.17922 of 1996

Mrs. Salammal ... Petitioner

Vs.

1. State of Tamil Nadu,
   Rep. By its Secretary,
   Social Welfare Department,
   Government of Tamil Nadu,
   Madras-9.

2. The Collector of Chengalpattu,
   M.G.R. District.

3. The Special Tahsildar,
   (Adi Dravida Welfare),
   Tiruttani,
   Chengalpattu MGR District. ... Respondents

This writ petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus,as state therein.

For Petitioner: Mr. J.Raja Kalifulla

For Respondents:Mr.R.Chandrasekaran
Government Advocate

Order:-

This writ petition has been filed by the petitioner praying to issue a writ of Certiorarified Mandamus to call for the records pertaining to the notification reference No.27, published in page 3 of the Chengalpattu MGR District Gazette

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Extraordinary dated 4.4.1996 relating to the petitioner's lands measuring 1.42.0 Hectares situated in S.F.No.156/1A.1B in 24 Sathrunjayapuram Village in Tiruttani Taluk of Chengalpattu M.G.R. District quash the said notice and forbear the respondents from in any manner acquiring or interfering with the petitioner's above said land.

2. The case of the petitioner is that she is the absolute owner of dry land measuring 1.42.0 Hectares comprised in S.F.No.156/1A-1B in 24 Satarunjayapuram Village in Tiruttani Taluk of CHengalpattu M.G.R. District ; that it is part of 3.08.5 Hectares situate in Survey No.156 owned by her consisting of S.F.No.156/1A1, 1B, 3, 4A, 4B and sub field 1A1 consisting of 2.57.0 Hectares; that since a part of lands in middle of these lands bounded on the east and west of her lands is sought to be acquired, this land has no access to the road in east and cut off the access to the road.

3. The further case of the petitioner is that she was served with a notice by third respondent in Form III, under Rule 5(1) dated 30.8.1996/6.9.1996 and she met the Collector, the Second respondent herein and submitted her reply to the Collector on 20.9.1996 objecting to the acquisition and proceedings and that the Collector assured that favourable orders would be passed and communicated to her, but so far as she has not received any reply; that now the third respondent is going to implement the notification and take possession of this land; that the respondents have failed to see that under the act a notice to the petitioner under section 4(2) of this Act is mandatory before any action under section 4(1) is taken, but the petitioner has not received any such notice and the notification also does not refer to any such notice and hence, on this ground the above notification is liable to be quashed; that further the object set out in the notice is vague and devoid of details and it does not specify the objects in precise terms.

4. The further case of the petitioner is that there are plenty of poramboke lands situate in and around the notified lands situated for the purpose for which these lands are sought to be acquired; that though the above facts have been brought to the notice of the respondents, still they have not considered them at all; that there are number of poramboke lands in Tiruttani and other neighbouring villages; that the petitioner's land is situate 3 or 4 villages away from Tiruttani; that there is no scheme at all as stated in the notification and no budgetary provisions have been made therefor; that the notification was not published anywhere in the District, Village or near the property nor was any one made aware of it, it was all done recently; that the entire proceedings is vitiated and contrary to well established principles of equity and justice;

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that it is against the basic principles enshrined in the Constitution and affects the petitioner's fundamental rights guaranteed under Article 226 of the Constitution of India. On such averments she would pray for the relief extracted supra.

5. In the counter affidavit filed by the third respondent besides generally denying the allegations in the petition, he would further submit th at the Adi Dravidas of Kariamedu and backyard of Kamala Theatre in Tiruttani own have encroached the lands belonging to Railway poramboke under the maintenance of Southern Railway and put up huts and residing there fore more than 15 years; that the total number of population is about 750; that since the above lands belong to Railway Department, the authorities concerned have issued notices to all the encroachers to vacate the land in order to extend the Railway Yard under the scheme of "Modernisation of Railway Station" and as such it is quite necessary to shift the entire families and to rehabilitate them in some other suitable places; that the land required for provision of 93 house sites for the Adi Dravidar families are 3.57 acres of 1.44.0 Hectares.

6. The third respondent would further submit that since there are no suitable poramboke lands assessed or un-assessed waste land available for provision of house sites to the Adi Dravidars either in Tiruttani village or in the adjacent villages, dry land consisting in Survey No.156/1A1, measuring 3.57.0 hectares in Saturunjayapuram village which falls within the radius of 3 Kms of Tiruttani and situated in the west to the Local Fund Road joining the Tiruttani-Madras National Highways at a distance of 200 meters was selected; that the above land is left waste without cultivation for more than 5 years; that since it is a manavari land and only dry crops can be cultivated with the aid of rain water it is fit for construction of house.

7. The third respondent would further submit that after satisfying that the above land has to be acquired for house sites necessarily, notice in Form I under Land Acquisition Act,31/78 was issued to the land owner in R.C.512/95/A/ dated 7.12.1995 by registered post and the same was returned unserved on 25.12.1995 with postal endorsement "Addressee not found in delivery time"; that a similar notice was sent through the Office Assistant for service in person on 7.12.1995; that since the land owner refused to receive the same, it was served by affixtue as per rules and hence it is quite clear that opportunity was given to the land owner to put forth her objection if any to the proposed acquisition; that inquiry was conducted on 29.12.1995 at the office of the third respondent, but the petitioner has not appeared for enquiry and no objection was received either from the petitioner or from anybody to the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

proposed acquisition till the date of enquiry and hence it was construed that there is no objection to the proposed acquisition; that based on the information given by the Village Administrative Officer, proposals were submitted to the Collector for acquisition of 1.42.0 hectares of dry land in S.No.156/1A1B of Sathranjayapuram village, Tirutttani Taluk by communication dated 17.2.1996; that the Collector has accepted the proposals and approved the draft notification under Section 4(1) of the Act, 31/78 by his proceedings dated 23.3.1996 and the notification was published in the Gazette on 4.4.1996.

8. The third respondent would further submit that the land value was fixed at Rs.200/- per cent and the total amount of compensation including 15% of the land value workout to Rs.80,670/-; that there are no wells, trees, buildings or structures located in the land involved under notification u/S 4 (1) of the Act, notice in Form III was issued on 30.8.1996; that the above notification was published in the Taluk Office, Tiruttani, Sub-Registrar's office,Panchayat Union Office and in the office of the third respondent on 2.9.1996 as required by rules; that the notification was also published in Sathranjayapuram village by beat of tom-tom on 4.9.1996 and a certificate to the above effect was also obtained from the Village Administrative Officer; that Award Enquiry was conducted on 20.9.1996 at the office of the third respondent; that the petitioner has deputed her son to the office with an objection petition; that since the opportunity for hearing was already given at the time of preliminary enquiry, the objection raised by the petitioner was not considered at the time of Award Enquiry; that Award was passed for acquisition of the said land in Award No.1/96-97/A dated 25.2.1996; that the petitioner was informed by a notice dated 5.11.1996 to receive the compensation by Registered Post,but it was returned on 8.11.1996 with postal endorsement that the "addressee is not found in delivery time"; that it clearly shows that the petitioner has wantonly evaded to receive the notice and as such the entire amount of compensation of Rs.80,579/- was kept under Revenue Deposit at Sub-Treasury, Tiruttani; that after passing the Award voluntary possession was taken on 29.11.1996 after observing all the usual formalities and necessary changes have been carried out in the village accounts on 9.11.1996 by the Sub Inspector of Survey and by the Tahsildar, Tiruttani in the taluk accounts. On such averments, he would pray for dismissal of the above writ petition.

9. In consideration of the facts pleaded,having regard to the materials placed on record and upon hearing the arguments of the learned counsel for the petitioner and the learned Government Advocate for the respondents, what comes to be known is that it is a Land Acquisition proceedings initiated by the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

respondents for the purpose of providing house sites for Adi-Dravidars who have occupied for the last 15 years a land belonging to the Southern Railways and since the said land occupied by those people is required for the purpose of the Railways, alternative arrangements have to be made and therefore since the land of the petitioner was found suitable for rehabilitating the Adi-dravidars, the respondents have fixed the same, which is the subject matter herein and this acquisition proceedings initiated by the respondents for the said public purpose which is under challenge, mainly on ground that the petitioner was not served with notice under Section 4 (2) of the Land Acquisition Act, 1894, which is mandatory for an action to be initiated under Section 4(1) of the said Act. It must be borne in mind that the land acquisition is made under Special Act and therefore notice has to be issued in Form-I under Land Acquisition Act, 31 of 1978 and according to the respondents the same has been issued in R.C.512/95/A dated 7.12.1995 by Registered Post and the same was returned unserved on 26.12.1995 with postal endorsement "Addressee not found in delivery time". It is the further case of the respondents that a similar notice was sent through Office Assistant for service to receive the notice and therefore the said notice has been served by affixture as per rules and hence it is not a case wherein the Land Acquisition proceedings would suffer for want of sufficient notice as contemplated under the Act, but it is a case of refusal to receive the notice by the owner of the land.

10. In many recent judgements, the Honourable Apex Court has held that in the service of notice effected even if the parties either failed to receive the same or not found in the address, if an honest attempt has been made to serve the notice to the correct address of the person to whom notice has to be served on such basis further proceedings could be carried on and therefore the case in hand being one assessed with the above parameters for the reason that the authorities have not only issued the notice by Registered Post and since the same was returned "unserved" on 26.12.1995 with postal endorsement "Addressee not found in delivery time" a similar notice has been sent through Office Assistant for service in person on 7.12.1995 and since the petitioner refused to receive the said notice and the said notice was served by affixture since being permissible under Rules and the same having been done there is no question of no notice served on the petitioner at all. In fact, the petitioner has refused to receive the notice and on such circumstances except to serve the same by affixture nothing else could be done nor is it necessary and therefore, it is not a case without notice but the denial or refusal to receive the notice by the addressee. Prompt service has been effected on the part of the respondents and therefore the contention of the petitioner that she was not served with sufficient notice under

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the rules as extracted supra cannot be accepted. From the materials placed on record it would further come to be seen that the respondents have meticulously followed all the procedural aspects in the acquisition of the land in question and therefore the petitioner is not entitled to get the relief sought for in the above writ petition and hence with the following order.

In result,

(i) For the reasons stated above, the writ petition does not merit acceptance and the same is liable to be dismissed and is dismissed accordingly; and

(ii) The Notification reference No.27 published in page 3 of the Chengalpattu M.G.R. District Gazette extraordinary dated 4.4.1996 pertaining to petitioner's lands measuring 1.42.0 Hectares situated in S.F. No.156/1A.1B in Sathrunjayapuram Village Tiruttani Taluk of Chengalpattu, M.G.R. District stands confirmed.

There shall be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copy to:

1. The Secretary,
   State of Tamil Nadu,
   Social Welfare Department,
   Government of Tamil Nadu,
   Madras-9.

2. The Collector of Chengalpattu,
   M.G.R. District,
   Kancheepuram.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. The Special Tahsildar,
   (Adi Dravida Welfare),
   Tiruttani Taluk Office, Tiruttani.
   Chengalpattu MGR District.

One cc to M/s Hajee P.K.Jamal Mohamed, Advocate SR.No.51475.

One cc to Govt. Pleader SR.No.51287.

W.P.No. 17922 of 1996

PV [co]
MK

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/